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The Biggest Transportation Rulings Of 2020

By **Linda Chiem**

Law360 (December 18, 2020, 2:23 PM EST) -- Appellate courts handed down mixed rulings this year on whether gig-economy drivers are exempt from arbitration, and California courts issued decisions narrowing the scope of the federal government's preemption of certain regulations for airline and trucking workers.

The decisions addressed the enforceability of trucking, logistics and gig-economy companies' arbitration agreements, as well as the growing tension between the federal government's authority to regulate interstate transportation companies and states' authority to set general workplace standards, among other things.

Here's a look at some of the biggest rulings that impacted the transportation sector in 2020.

Amazon Drivers Score An Out From Arbitration

This year was a particularly busy one for litigation concerning the scope of the Federal Arbitration Act's Section 1 exemption for transportation workers engaged in interstate commerce. Motor carriers, logistics giants and gig-economy companies have been dueling with drivers and couriers seeking to be classified as employees instead of independent contractors to snag the benefits and job protections that typically come with employee status.

But courts have had to first figure out the limits of the "transportation worker" definition and whether they stretch to cover gig-economy workers who might not have traditionally been included in the category. That determines which wage-and-hour disputes can be heard in court and which get kicked to arbitration.

A divided Ninth Circuit panel in August cemented that Amazon Flex **delivery drivers are exempt** from mandatory arbitration, **aligning** with a unanimous First Circuit panel, which issued a **similar decision** in another Amazon case just the month before.

Both courts notably **zeroed in** on the **size and nature** of Amazon's behemoth e-commerce and logistics business, and not just the **specific activities** of the Amazon Flex drivers at the heart of the dispute. Even purely local drivers making deliveries in just one state play a big enough role in the flow of interstate commerce to be exempt from arbitration, the courts concluded.

Management-side attorneys have said they're concerned the decisions could lead to drawn-out legal battles involving other people who work in transportation, logistics or the gig economy claiming they too are exempt from arbitration. Meanwhile, plaintiffs-side attorneys have said the rulings made clear that companies cannot hide behind arbitration agreements to evade liability for flouting state and federal employment laws.

"Judges get to choose whether the camera pans back to capture the full scope of our modern, online and interconnected economy, or zooms in tight to capture what a worker does in a given moment in a given place," Christian Schreiber of Olivier Schreiber & Chao LLP said of the Ninth Circuit decision. "But make no mistake: Amazon operates everywhere and benefits from its ubiquity. It's absurd for the company to reap all the rewards of a national footprint and then claim that there is any meaningful activity that is truly and exclusively 'local.'"

However, the Seventh Circuit in August **shut down** an attempt by couriers and drivers for online food delivery company Grubhub to **collectively pursue** their wage-and-hour claims in court, sending them to arbitration instead. That decision, authored by now-U.S. Supreme Court Justice Amy Coney Barrett, **rejected** the drivers' argument that they were exempt because they carried goods that previously moved across state and even national lines. The Seventh Circuit said that wasn't enough because "the workers must be connected not simply to the goods, but to the act of moving those goods across state or national borders."

En banc rehearing petitions were denied in all three cases. Amazon, meanwhile, petitioned the Supreme Court in November for review of the Ninth Circuit decision.

The cases are Rittmann et al. v. Amazon.com Inc. et al., case number 19-35381, in the U.S. Court of Appeals for the Ninth Circuit; Bernard Waithaka v. Amazon.com Inc. et al., case number 19-1848, in the U.S. Court of Appeals for the First Circuit; and Carmen Wallace et al. v. Grubhub Holdings Inc. et al., case number 19-1564, and Thomas Souran et al. v. Grubhub Holdings Inc. et al., case number 19-2156, in the U.S. Court of Appeals for the Seventh Circuit.

Calif. Courts Offer Mixed Take On Truckers' A.B. 5 Challenges

A California state appeals court **ruled in November** that a controversial Golden State law that raised the bar for legally classifying workers as independent contractors may apply to trucking companies and that it is not preempted by federal law prohibiting state regulation of the industry.

A Second Appellate District panel reversed a trial court's January **decision** determining that the requirements of the three-prong ABC test — the legal framework adopted by the California Supreme Court's 2018 Dynamex **decision** and later **enshrined into law** through **Assembly Bill 5** — "clearly run afoul" of the Federal Aviation Administration Authorization Act of 1994.

The appellate panel rejected the idea that worker classification laws that apply generally across industries necessarily violate the FAAAA, which bars any state law "relating to a price, route or service of any motor carrier." The decision applied to three related cases filed by the Los Angeles city attorney's office in January 2018 — before the landmark Dynamex ruling was issued — alleging that truck drivers were misclassified. The defendants in those cases include Cal Cartage Transportation Express LLP, CMI Transportation LLC and K&R Transportation California LLC.

Marc S. Blubaugh, co-chair of Benesch Friedlander Coplan & Aronoff LLP's transportation and logistics practice group, said he was disappointed that the state appellate court refused to recognize the broad preemptive power of the FAAAA. The decision now provides ammunition to other jurisdictions, like New Jersey, "that have been hostile to the independent contractor model," he said.

"Advocates for destruction of this vital business model in other states may become even more emboldened now that Cal Cartage gives them another arrow in their quiver," Blubaugh said. "Further, some legislators in other states who may have been chilled from supporting legislation akin to A.B. 5 because they wanted to avoid a loss in court on the basis of preemption may now give such legislation a second look."

In a separate federal court challenge led by the California Trucking Association and individual truck drivers, U.S. District Judge Roger T. Benitez in January **granted** a **preliminary injunction** barring A.B. 5 from being enforced against motor carriers and owner-operators in the trucking industry. State Attorney General Xavier Becerra's office and the Teamsters promptly **appealed** to the Ninth Circuit, challenging Judge Benitez's finding that A.B. 5 was likely preempted by the FAAAA.

The Ninth Circuit heard **oral arguments** on Sept. 1. The state argued that Judge Benitez made a wild leap — unsupported by evidence — that a law applying to all California employers would force motor carriers into situations where they could no longer lawfully use independent contractors to move goods or otherwise operate their business. Meanwhile, the CTA and truckers have argued that A.B. 5 is not a law of general applicability, because it contains numerous exceptions for a broad range of professions and industries. Furthermore, California voters' **approval** of a ballot measure, Proposition 22, allowing gig-economy businesses to classify workers as independent contractors **supports** affirming the injunction, the CTA has argued.

The state court case is The People v. The Superior Court of Los Angeles County et al., case number B304240, in the Court of Appeal for the State of California, Second Appellate District.

The federal appeal is CTA et al. v. Becerra et al., case numbers 20-55106 and 20-55107, in the U.S. Court of Appeals for the Ninth Circuit; and the underlying case is California Trucking Association v. Becerra et al., case number 3:18-cv-02458, in the U.S. District Court for the Southern District of California.

9th Circ. Revives Counties' VW Tampering Claims

The Ninth Circuit in June poked holes in a **federal shield** that allowed Volkswagen to dodge claims it violated two U.S. counties' anti-tampering laws during its 2015 diesel emissions-cheating scandal, exposing the German automaker to additional damages and prolonged legal battles.

The appeals court **cleared a path** for Hillsborough County, Florida, and Salt Lake County, Utah, to enforce county regulations prohibiting tampering with vehicles' emission controls, reversing a California federal judge's 2018 finding that the Clean Air Act **preempted their claims** against Volkswagen.

The same three-judge panel in September **granted** Volkswagen's **motion to stay mandate**, pressing pause on restarting the district court litigation so that Volkswagen could petition the U.S. Supreme Court to review the preemptive scope of the Clean Air Act.

The Ninth Circuit acknowledged that its **June decision** opened Volkswagen Group of America Inc. up to potentially "staggering" and "unexpected and enormous liability." It set back the automaker's efforts to move past its 2015 admission that it rigged more than 500,000 "clean" diesel vehicles in the U.S. with emissions-cheating software known as defeat devices, and could force Volkswagen to brace for fresh legal clashes with state and local governments. The ruling also raised concerns about state and local governments creating a patchwork of regulations governing vehicle maintenance, recalls and field fixes after cars are sold and driven off the lot.

Noah Perch-Ahern, a environmental law partner at Greenberg Glusker Fields Claman & Machtinger LLP, said the Ninth Circuit's decision was significant in that it set a fairly bright-line rule that post-sale tampering claims under state law are not preempted by the Clean Air Act, at least with respect to state anti-tampering laws that do not impose standards that are different than federally mandated emissions requirements.

"While the odds of the court granting review are statistically quite low, the Supreme Court has been taking up review of other cases addressing federalism concerns in environmental cases, and this case would seem to complement that mix of cases," Perch-Ahern said. "If the Ninth Circuit decision holds up, the automakers will be vulnerable to a potential flood of claims by other local governments and states."

The appellate case is In re: EPC of Hillsborough County et al. v. Volkswagen Group of America et al., case number 18-15937, in the U.S. Court of Appeals for the Ninth Circuit.

9th Circ. Clarifies Airlines' Calif. Pay Stub Obligations

The California Supreme Court **ruled in June** that the state's minimum wage law and labor codes still apply to Golden State-based pilots and flight attendants even if most of their actual work is done out of state. The rulings came down in separate **appeals that landed** before the justices in 2018 after the Ninth Circuit **asked them** to take up suits from pilots and flight attendants who challenged various pay practices at Chicago-based United Airlines Inc. and Atlanta-based Delta Air Lines Inc.

The state high court rejected the airlines' arguments that the workers spend most of their time in federal airspace and cannot be subject to the state laws. It determined that airlines must comply with California's pay stub requirements and minimum wages if their workers' "principal place of work" is in California — meaning that California "serves as the physical location where the worker presents himself or herself to begin work" — regardless of the workers' place of residence or whether a collective bargaining agreement governs their pay.

The California justices had agreed in July 2018 to take up the Ninth Circuit's certified questions in two suits alleging United violated California Labor Code Section 226 by issuing noncompliant wage statements to flight attendants and pilots. The justices also granted the request for certified questions in a suit alleging Delta wasn't properly compensating flight attendants on an hourly basis for all their work.

The decisions clarified **how far-reaching** the Golden State's wage laws really are, especially for airlines, railroads and motor carriers that operate nationally or any other transportation companies that might have connections to California. And experts say it puts those companies on notice that they must brace for additional compliance headaches that could come with a patchwork of state wage statement statutes.

In the cases against United, the Ninth Circuit asked the state high court to decide if Section 226 applies to wage statements given by out-of-state employers to employees who don't principally work in California but who reside and get paid there. The justices were also asked to clarify how to reconcile Section 226 with Wage Order 9, which exempts an employee from the state wage statement requirements who has entered into a collective bargaining agreement in accordance with the federal Railway Labor Act.

In the case against Delta, the high court also addressed whether state minimum wage law applies to work done in California for an out-of-state employer by an employee who works only episodically in the state and for less than a day at a time. On that issue, the California Supreme Court agreed with Delta that its rotation-based pay scheme complies with state minimum wage statutes, concluding that formulas in the airline's contract ensure flight attendants are always paid above the minimum wage for the hours worked during each rotation without borrowing from compensation promised for other rotations.

Following the California Supreme Court rulings, the dispute is now back before the Ninth Circuit, which heard oral arguments in October. Two judges **appeared skeptical** of United and Delta's arguments that it would be "too burdensome" to comply with California's labor code and wage statutes.

The California Supreme Court cases are Ward v. United Airlines Inc., case number S248702, and Oman v. Delta Air Lines Inc., case number S248726, in the California Supreme Court.

The Ninth Circuit cases are Felicia Vidrio et al. v. United Airlines Inc. et al., case number 17-55471; Charles Ward v. United Airlines Inc., case number 16-16415; and Dev Oman v. Delta Air Lines Inc., case number 17-15124, in the U.S. Court of Appeals for the Ninth Circuit.

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